

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0587**

**Sales and Use Taxes**

**Calendar Years 1995, 1996, 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer provides cleaning and janitorial services to the government and to the public. Taxpayer protests the penalty assessed on an audit completed on July 13, 1998. It no longer protests tax or interest. Taxpayer states it was given a tax-exempt number from the government entity, upon which it relied. A review of the contracts, however, indicate they are for custodial services, ground maintenance, refuse collection, and snow removal and not the sale and delivery of products. The contracts specify that the contractor furnishes needed items to meet the requirements of the contract to accomplish the work. The contracts, therefore, are for services, not sales, and the taxpayer is the service provider who must pay sales or use tax on supplies used in providing those services.

Taxpayer failed to collect sales tax on taxable sales and failed to self assess use tax on clearly taxable items. In addition, taxpayer failed to file ST103's for part of 1996 and all of 1997. In 1995, the taxpayer filed "zero" returns.

1. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer's audit report revealed that no sales tax was charged for the sale of tangible personal property and it had no use tax accrual system in place. The ST-103's clearly have an area in which to report purchases where no sales tax was collected. The taxpayer failed charge and self assess tax as required by statute.

Taxpayer's argument that it received a tax-exempt number from the government, however, has no bearing on the fact that it did not remit tax whatsoever. In addition, the taxpayer issued exemption certificates to all of its suppliers. Taxpayer also did not file all of its ST103 returns, which is clearly negligent.

**FINDING**

Taxpayer's protest is denied.